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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/813,820	03/22/2001	Magnus Hook	P06357US02/BAS	8424

881 7590 03/08/2002

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EXAMINER	
FORD, VANESSA L	
ART UNIT	**PAPER NUMBER**
1645	8

DATE MAILED: 03/08/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/813,820	HOOK ET AL.	
	Examiner	Art Unit	
	Vanessa L. Ford	1645	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *22 March 2001* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-16* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-16* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *5 &6* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

DETAILED ACTION

Priority

1. Applicant is asked to update the status of all parent applications.

Specification Objections

2. The specification is objected to because of the following informalities: What appears to be typographical errors. page 2, line 12 recite "can" and can-derived which should be changed to "*cna*" and "*cna*-derived" The specification should be reviewed for the above type of informalities and correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3, 5-11 and 13-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Wirl et al *(Exp Cell Res, May 1988, 176(1) 20-37).*

Claims 1-3, 5-11 and 13-16 are drawn to an isolated antibody which binds to a purified peptide composition consisting essentially of the amino acid sequence of SEQ ID No. 4 wherein said antibody prevents *Staphylococcus aureus* infection.

Wirl et al teach polyclonal antibodies direct against collagen-binding proteins. Wirl et al further teach antiserum that contained collagen-binding antibodies. Wirl teach that the treatment with the antiserum did not affect attachment and spreading of cuboidal mammary cells or plastic to a collagen substratum (see the Abstract). Limitations such as "suitable for parental, oral, intranasal, subcutaneous or intravenous administration" and "prevents *S. aureus* infection" are being view as limitations of intended use.

Since the Office does not have the facilities for examining and comparing applicant's antibody with the antibody of the prior art, the burden is on the applicant to show a novel or unobvious difference between the claimed product and the product of the prior art (i.e.,that the antibody of the prior art does not possess the same material structural and functional characteristics of the claimed antibody). See In re Best, 562 F.2d 1252, 195 USPQ 430 (CCPA 1977) and In re Fitzgerald et al., 205 USPQ 594.

4. Claims 1-3, 5-11 and 13-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Ogle et al *(J of Cell Sci, October 1989,94(PT 2):361-369).*

Claims 1-3, 5-11 and 13-16 are drawn to an isolated antibody which binds to a purified peptide composition consisting essentially of the amino acid of SEQ ID No. 4 wherein said antibody prevents *Staphylococcus aureus* infection.

Ogle et al teach polyclonal antibodies to collagen binding proteins raised in a rabbit. Ogle et al also teach collagen binding antiserum containing the collagen binding protein antibody (page 362). Limitations such as "suitable for parental, oral, intranasal,

subcutaneous or intravenous administration" and "prevents *S. aureus* infection" are being view as limitations of intended use.

Since the Office does not have the facilities for examining and comparing applicant's antibody with the antibody of the prior art, the burden is on the applicant to show a novel or unobvious difference between the claimed product and the product of the prior art (i.e.,that the antibody of the prior art does not possess the same material structural and functional characteristics of the claimed antibody). See In re Best, 562 F.2d 1252, 195 USPQ 430 (CCPA 1977) and In re Fitzgerald et al., 205 USPQ 594.

5. Claims 1-3, 5-13 and 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Patti et al *(The Journal of Biological Chemistry, Vol. 270, No. 20, May 19, 1995).*

Claims 1-3, 5-13 and 14-16 are drawn to an isolated antibody which binds to a purified peptide composition consisting essentially of the amino acid of SEQ ID No. 4 wherein said antibody prevents *Staphylococcus aureus* infection.

Patti et al teach that polyclonal antibodies against the recombinant collagen binding segment MSCRAMM segment were produced in rabbits. (page 12006, first column) Limitations such as "suitable for parental, oral, intranasal, subcutaneous or intravenous administration" and "prevents *S. aureus* infection" are being view as limitations of intended use.

Since the Office does not have the facilities for examining and comparing applicant's antibody with the antibody of the prior art, the burden is on the applicant to show a novel or unobvious difference between the claimed product and the product of

the prior art (i.e.,that the antibody of the prior art does not possess the same material structural and functional characteristics of the claimed antibody). See In re Best, 562 F.2d 1252, 195 USPQ 430 (CCPA 1977) and In re Fitzgerald et al., 205 USPQ 594.

6. Claims 1-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Patti et al *(The Journal of Biological Chemistry, Vol. 267, No. 7, March 5, 1992).*

Claims 1-16 are drawn to an isolated antibody which binds to a purified peptide composition consisting essentially of the amino acid of SEQ ID No. 4 wherein said antibody prevents *Staphylococcus aureus* infection.

Patti et al teach monospecific antibodies that recognized a recombinant *Staphylococcus aureus* collagen adhesin (see the Abstract and page 4771, 2nd column). Limitations such as "suitable for parental, oral, intranasal, subcutaneous or intravenous administration" and "prevents *S. aureus* infection" are being view as limitations of intended use.

Since the Office does not have the facilities for examining and comparing applicant's antibody with the antibody of the prior art, the burden is on the applicant to show a novel or unobvious difference between the claimed product and the product of the prior art (i.e.,that the antibody of the prior art does not possess the same material structural and functional characteristics of the claimed antibody). See In re Best, 562 F.2d 1252, 195 USPQ 430 (CCPA 1977) and In re Fitzgerald et al., 205 USPQ 594.

Pertinent Prior Art

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure *(Guss et al, U.S.Patent No. 5,851, 794, published December 22, 1998).*

Status of Claims

8. No claims are allowed.

Conclusion

9. Any inquiry of the general nature or relating to the status of this general application should be directed to the Group receptionist whose telephone number is (703) 308–0196.

Papers relating to this application may be submitted to Technology Center 1600, Group 1640 by facsimile transmission. The faxing of such papers must conform with the notice published in the Office Gazette, 1096 OG 30 (November 15, 1989). Should applicant wish to FAX a response, the current FAX number for the Group 1600 is (703) 308-4242.

Any inquiry concerning this communication from the examiner should be directed to Vanessa L. Ford, whose telephone number is (703) 308-4735. The examiner can normally be reached on Monday – Friday from 7:30 AM to 4:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith, can be reached at (703) 308–3909.

Vanessa L. Ford
Biotechnology Patent Examiner
March 1, 2002

LYNETTE R. F. SMITH
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